IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BRIJESH ALIAS VIJAY MANHARLAL SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 12/05/2003

ORAL JUDGEMENT

#. Challenge in this Special Civil Application is to the

order dated 17.9.2002 passed under the provisions of Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act), by the Commissioner of Police, Surat City, on the ground that the petitioner is a "dangerous person" indulging in anti-social activities and thereby violating law and that there are as many as four theft cases pending against him.

#. The facts that emerge from the record manifest the following aspects unequivocally:

(i) The petitioner-detenu, came to be arrested on 14th April, 2002, for the first offence, on 15th April, 2002, for the second offence, and on 16th April, 2002, for the third offence. All these cases were related to alleged offence of theft.

(ii) Two statements of witnesses came to be recorded on 27th July, 2002. They were verified by the competent authority on 13th September, 2002.

(iii) The detention order came to be recorded on 17th September, 2002.

#. There is no doubt about the fact that there is delay of more than five months in passing the detention order. It is settled proposition of law that in detention matters, ipso-facto, while passing the order of detention, it is incumbent upon the authority as mandated by law to explain the delay satisfactorily, failing which, the detention order would assume the color of illegality. In the opinion of this Court, therefore, there is ample substance in the plea of delay. It is therefore that the detention order questioned in this writ petition under Article 226 of the Constitution of India cannot be sustained. The detention order, therefore, is not legal and valid, and deserves to be quashed. The view which this Court is inclined to take is also very much supported by the following two decisions:

a) Thakore Girishji v. District Magistrate - 2002(1) GCD 338

b) Ilesh Nandubhai Patel v. Police Commissioner, Ahmedabad City - 1997(1) GLH 381

#. In the result, the petition is allowed. The order of detention dated 17th September, 2002, is quashed and set aside. The petitioner - Brijesh alias Vijay Manharlal

Solanki shall be set at liberty forthwith provided he is not required in any other case. Rule is made absolute without any order as to costs. Direct Service is permitted.

(J.N.Bhatt, Acting C.J.)

(sunil)